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Conference

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

17 CR 630 (ER)

5 MARK SCOTT,

6 Defendant.

7 -----x

8 New York, N.Y.  
9 October 10, 2019  
2:00 p.m.

10 Before:

11 HON. EDGARDO RAMOS,

12 District Judge

13  
14 APPEARANCES

15 GEOFFREY S. BERMAN

United States Attorney for the  
Southern District of New York

16 CHRISTOPHER J. DIMASE

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21 ARLO DEVLIN-BROWN

22 KATRI STANLEY

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1 (Case called)

2 MR. DIMASE: Good afternoon, your Honor.

3 Christopher DiMase, for the government. I'm joined at  
4 counsel table by AUSA Nick Folly and from the New York County  
5 District Attorney's Office, Julieta Lozano.

6 MR. DEVLIN-BROWN: Good after, your Honor.

7 Arlo Devlin-Brown, for Mark Scott, who is seated to my  
8 right.

9 With your Honor's permission Katri Stanley to my left  
10 is a 2019 law school graduate who is not yet admitted to the  
11 bar but if your Honor is all right with that --

12 THE COURT: She is more than welcome. Good afternoon  
13 to you all.

14 This matter is on for a conference. I understand that  
15 the parties have a number of items that they want me to rule  
16 on. Let me just ask where we are in terms of scheduling. I do  
17 have the government's letter of October 3, on which they set  
18 forth a, an on concept pretrial schedule.

19 How are we doing on these dates, Mr. DiMase? I notice  
20 that one date is passed, the date for the government to put  
21 forth its expert notice disclosure. Are we on schedule?

22 MR. DIMASE: Your Honor, we are abiding by the terms  
23 of that schedule. We did disclosure expert notice to the  
24 defense.

25 THE COURT: Are you calling an expert?

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1 MR. DIMASE: Your Honor, we have noticed three  
2 different sort of individuals or groups of, general groups of  
3 people. Two of them we don't believe would constitute an  
4 expert but we've disclosed them anyway and one of those, a fact  
5 witness, one or more fact witnesses from banks who would  
6 testify about the facts that are relevant to the case. But in  
7 the course of their testimony we expect them to also address  
8 things like the procedures in place at banks to combat money  
9 laundering, the way in Swift messages are used in order to send  
10 money through corresponding banks and things of that nature or  
11 that would place the remainder of their testimony in context.

12 THE COURT: Swift messages?

13 MR. DIMASE: A Swift message is basically a message  
14 directing banks to transfer funds through a network of bank  
15 accounts.

16 THE COURT: Is this person a United States individual?

17 MR. DIMASE: With respect to the one person that we've  
18 identified and there may be a couple of others but he is an  
19 employee of the Bank New York Mellon here in New York, yes.

20 THE COURT: He'll be testifying generally as to KYV  
21 procedures and money laundering procedures at banks.

22 MR. DIMASE: Those things along with Swift message  
23 procedures. But we also will have relevant testimony specific  
24 to this case about because that bank served as the  
25 correspondent bank for Mr. Scott's bank accounts in the Cayman

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1 Islands. So he is handling inbound and outbound wire transfers  
2 in euros and in dollars. So it would have seemed, the Swift  
3 messages there was actually a point where the bank posed due  
4 diligent questions to the bank in Cayman Island or BNY Melon  
5 and eventually terminated or put on the lists some of its  
6 entities that sending money to Mr. Scott's account.

7 THE COURT: Because it may be relevant to our  
8 discussion in a little bit, will the procedures that he would  
9 describe, are they essentially the same as the bank of Ireland  
10 as they are here in the United States?

11 MR. DIMASE: Your Honor, we have not had a full  
12 opportunity to meet with him and understand exactly what the  
13 balance of his testimony will be. So I can't say that they  
14 would be exactly the same. There are some particular details  
15 around the testimony of Ms. Sands that I think are specific to  
16 the case and the proof at trial. That go beyond sort of  
17 generic testimony about how procedures work. I think if that's  
18 where you are headed with the question --

19 THE COURT: Yes.

20 MR. DIMASE: -- the issue with Mr. Sands and  
21 Ms. Lozano is prepared to address the Rule 15 motion.

22 THE COURT: OK.

23 MR. DIMASE: Maybe can we defer that point until we  
24 get to that motion?

25 THE COURT: Sure.

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1 MR. DIMASE: One moment, your Honor.

2 The second person that we noticed in the expert notice  
3 which we did so in an abundance of caution is an individual  
4 from a fund administrator that administers some of these  
5 private equity funds for Mr. Scott for a period of time. We  
6 expect that he'll testify about the factual context of their  
7 relationship the way that it developed and the ultimate  
8 termination of that relationship once the fund administrator  
9 noticed a connection to one -- became very concerned about  
10 processing further transactions. But the course of his  
11 testimony we also anticipate that he would testify more  
12 generally about how private equities funds work to place  
13 Mr. Scott's alleged private equity funds into some context.

14 In other words, another fact witness who will be  
15 testifying about interactions with Mr. Scott and his funds but  
16 also provide some level of background about how private equity  
17 funds generally operate. So those were the two individuals we  
18 noticed as nonexpert experts.

19 And then the third person falls more in the bucket of  
20 a typical expert, a money laundering expert who would testify,  
21 among other things, about the use of shell companies, the use  
22 of layering of funds through accounts to hide its source, the  
23 use of Swift messages in the context of money laundering, the  
24 use of documents to paper over transactions that might  
25 otherwise represent money laundering.

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1 To be clear, as we mentioned in our notice to the  
2 defense, we would not ask that witness if the conduct of  
3 Mr. Scott was or was not money laundering. He would simply  
4 testify at a higher level about these various different  
5 practices, an area of testimony that has been repeatedly upheld  
6 by the exhibit and we actually cited cases that have upheld  
7 that sort of testimony in the expert notice that we've provided  
8 to Mr. Devlin-Brown.

9 So those are the three that we've noticed

10 THE COURT: Thank you.

11 Mr. Devlin-Brown, as you sit here are you able to  
12 share with the Court whether or not you will be providing  
13 expert testimony?

14 MR. DEVLIN-BROWN: I'm not yet, your Honor. We didn't  
15 have any idea that there would be a money laundering expert  
16 until we got notice on Monday. So we're obviously giving that  
17 some thought. I'd add that the disclosure didn't identify any  
18 particular experts. So it's sort of a broad statement that  
19 they may call a money laundering expert. We're going to look  
20 at that and evaluate it.

21 With respect to the bankers and the lay witnesses, I  
22 think generally we are not going to object to bankers  
23 testifying about things they know a lot about through their own  
24 duties and employment at the bank or financial service  
25 industries, as long as that testimony is otherwise relevant.

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1 So I appreciate notice on it but I don't think that's going to  
2 be a point of major contention as long as the testimony is  
3 relevant.

4 MR. DIMASE: We're in the process of identifying a  
5 particular person and we'll disclose that obviously as soon as  
6 we've identified that person on the money laundering expert  
7 front and we'll provide biographical information or a CV to the  
8 defense.

9 THE COURT: OK. How do we want to take the two  
10 motions since the defense filed their motion first?

11 MR. DIMASE: Your Honor, I was just going to note, we  
12 have to arraign the defendant on the S10 indictment.

13 THE COURT: Mr. Devlin-Brown, has your client received  
14 a copy of the superseding indictment?

15 MR. DEVLIN-BROWN: He has, your Honor.

16 THE COURT: Do you wish a public reading?

17 MR. DEVLIN-BROWN: No. Thank you, your Honor.

18 THE COURT: How does Mr. Scott plead?

19 MR. DEVLIN-BROWN: He pleads not guilty to both counts  
20 One and Two, your Honor.

21 THE COURT: Very well. Like I said, since the defense  
22 filed this motion first, we can address the motion to suppress  
23 Mr. Scott's post-arrest statements.

24 Mr. Devlin-Brown, do you wish to be heard?

25 MR. DEVLIN-BROWN: Briefly, your Honor. This is a

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1 motion that is easier for the Court to decide an motions where  
2 there was no videotaped testimony because the Court has the  
3 entire record before it. This was a situation as we laid out  
4 in our motion where Mr. Scott at the outset expressed some  
5 hesitancy multiple times about whether or not he'd be willing  
6 to speak with the agent. He ultimately agreed that he would  
7 speak a little bit, sought assurances that if he said "stop",  
8 they would stop. Then came a moment 20 or 30 minutes in where  
9 Mr. Scott raised the issue of calling a lawyer in order to  
10 prepare for court later that day. He had been arrested. The  
11 agents said that they would take care of that in a few minutes.  
12 And then they said hold on a second and they walked out of the  
13 room for eight minutes. Came back in. No mention of  
14 Mr. Scott's request. They resumed questioning.

15 And then I think you get really to the key moment  
16 where beyond that questioning should be suppressed. They  
17 started asking him about a particular transaction and he made  
18 the statement that quote, If we get this detailed, then I  
19 really should get a lawyer involved.

20 And as we outlined in the reply brief I think in  
21 probably the greatest clarity, this was not a hypothetical, if  
22 you in the future get detailed. This was in response to very  
23 specific detailed questions that the agents were asking him  
24 about a transaction and the phrase, "I think I should get a  
25 lawyer involved" has been found by the Second Circuit to be an



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1 invitation of counsel.

2 So once you subtract and it wasn't really a  
3 hypothetical he is talking about something happening then and  
4 then says "I think I should get a lawyer involved", on top of  
5 that, your Honor, you then have the fact that the agents paused  
6 for 57 seconds, nearly a minute. They're, as pointed out in  
7 the government's opposition, there's some people taking notes  
8 and moving papers. But they pause instantly when he said "I  
9 think I need to get a lawyer involved" or "I think I would like  
10 to get a lawyer involved" and he added because he was afraid he  
11 would say something wrong. Then after that the agents after  
12 waiting a minute just resume and go back into questioning  
13 again.

14 In their opposition the government suggests well they  
15 didn't question him about that same topic again. But that's  
16 not how Miranda works. Once there's actually an invocation and  
17 request to speak to a lawyer for advice on the questioning. So  
18 I think by that point anyway, your Honor, the questioning  
19 should have stopped and the statements beyond that point should  
20 therefore be suppressed.

21 THE COURT: Thank you.

22 Who is going to speak on behalf of the government,  
23 Mr. Folly?

24 MR. FOLLY: Yes, your Honor.

25 Also, just briefly because I think our brief hits on

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1 many of the key points here. But the first point is that this  
2 is an objective test and what we're looking at is the language  
3 that the defendant used during this portion of the interview.  
4 The defense cites to the first purported invocation which was  
5 actually a statement that pertained to the defendant making a  
6 phone call to a set of litigators who in turn might have had  
7 references or ideas about who might be able to represent the  
8 defendant at a bail proceeding later that day.

9 The case law is very clear that the purported  
10 invocation has to actually pertain to the custodial  
11 interrogation. So the first statement which defense counsel  
12 points to, I think at this point he essentially concedes after  
13 no legal argument as to why that statement was actually  
14 pertaining to custodial interrogation. So I think at this  
15 point that statement is not really being advocated as far as  
16 the protections of Miranda.

17 As for the second statement, again it's an objective  
18 test and the defense cites to the Wood case. In the Wood case  
19 the defendant said "I think I should get a lawyer involved".  
20 That was the actual statement. Here, the statement is  
21 something to the effect of "If we are going to get this  
22 detailed then I should get a lawyer involved". It's anything  
23 but clear. It's anything but lacking in ambiguity. It's  
24 precisely the type of statement that the Wood case actually  
25 compared the statement at issue in Wood to. It compared it to

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1 statements such as "perhaps I should get a lawyer", "maybe I  
2 should get a lawyer". Statements that evidence some sort of  
3 ambiguity for, quote/unquote, internal debate on behalf of the  
4 declarant. And that is what the statement is here. It's a  
5 statement that has a very clear level of ambiguity.

6 The defendant also points to the agents' response  
7 after the statement was made and says, well, we should sort of  
8 look at the larger context here. To the extent that the larger  
9 context is really relevant here, what was clear to these agents  
10 was this was a lawyer. This was someone who was well educated,  
11 would have to speak clearly, said at the outset of the  
12 interview, if I say "stop" this interview should stop. Never  
13 for the rest of the interview ever uttered the word "stop".  
14 Never used that word.

15 And then what's also clear if you are watching the  
16 tape, at the very end of the interview, when the defendant  
17 actually makes a much more clear statement about wanting to  
18 speak with the lawyer, the agents immediately end the  
19 interview. There is no hesitation at that point in time. They  
20 thanked the defendant for speaking with them. And again, to  
21 the extent that these additional surrounding circumstances  
22 should go into the analysis, they actually cut the opposite  
23 direction of what defense counsel just advocated for here.

24 So, what it really boils down to is under the  
25 objective test this was not a clear and unambiguous statement.

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1 It was just the opposite. It was couched in hypotheticals and  
2 language that was anything but clear. And this is what the law  
3 is designed to protect against. I'm not putting agents in a  
4 position where they have to immediately end interviews any time  
5 the word "lawyer" is mentioned. That's simply not what the law  
6 is.

7 THE COURT: Thank you.

8 I am not going to suppress the statement. The  
9 statements made after the second purported invocation of right  
10 to counsel. I don't believe that the first one comes even  
11 close to an invocation of a right to counsel. But the second  
12 one, obviously, there is an argument to be made. However, I  
13 looked, reviewed the videotape of the interrogation very  
14 carefully. I've reviewed the relevant cases. In particular  
15 the case with Justice O'Connor where she describes because this  
16 thing, the landscape concerning ambiguous statements and the  
17 Supreme Court stated very clearly that while there is a  
18 prophylactic rule concerning direct clear invocations of the  
19 attorney/client privilege rather, the right to counsel where  
20 there is an ambiguity, where there is an ambiguous statement,  
21 not only are law enforcement agents not required to stop. They  
22 are also not required to ask clarifying questions. They can  
23 simply continue to ask questions.

24 Now, it may be that the better practice should be to  
25 ask clarifying questions but the Supreme Court was very clear

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1 in its determination that that not be the case. Here, we have  
2 an individual who may not be a criminal lawyer but is a very  
3 sophisticated business person and a lawyer, trained lawyer and  
4 he had the type of conversation prior to beginning that other  
5 cases I discussed where he engages with the agents and says,  
6 I'm happy to answer questions but if I say stop, we'll stop,  
7 right? Right. In other cases that have been brought to the  
8 Court's attention the individual who is being interrogated,  
9 much less is sophisticated individuals presumably given the  
10 crimes that they were being investigated for asked the same  
11 questions and continued their interrogation. So continued with  
12 the interrogation.

13 Here, Mr. Scott was advised of his rights. He  
14 indicated that he understood them. He indicated that he was  
15 willing to answer questions, notwithstanding, his rights and  
16 then he proceeded to answer questions after he was made, after  
17 he was given some comfort that he would be able to stop at any  
18 time.

19 There came a point in the interrogation when they were  
20 questioning him concerning particular documents and his  
21 testimony was or his statement was -- and I'll read it for the  
22 record so that it's clear. "I don't remember this transaction  
23 that well. I would have to see more documents. If we get this  
24 detailed, then I really should get a lawyer involved."

25 So again, it was stated in a hypothetical, if we are

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1 going to get this detailed, then I am going to want a lawyer  
2 involved. That is certainly not the kind of direct, clear  
3 invocation that one would expect from an individual who is as  
4 sophisticated as Mr. Scott. I believe that the agents were  
5 within their rights to consider that statement to be an  
6 ambiguous one. From my perspective based on the totality of the  
7 circumstances on the videotape, I considered that to be an  
8 ambiguous statement.

9 Accordingly, the motion to suppress will be denied.

10 Now with respect to the Rule 15/CCTV, Ms. Lozano, do  
11 you wish to be heard?

12 MS. LOZANO: Yes, your Honor, briefly.

13 In order not to reiterate everything that the  
14 government raised in its brief, I will highlight certain points  
15 and also direct the Court to the letter recently filed with the  
16 Court that gives further information and more recent  
17 information about the government's effort to secure this  
18 testimony.

19 THE COURT: I'm sorry. What letter filed?

20 MS. LOZANO: It was filed at about 12:15 this  
21 afternoon.

22 THE COURT: I have not seen it.

23 MS. LOZANO: I have a copy for the Court.

24 THE COURT: OK.

25 (Pause)

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1 THE COURT: OK.

2 MS. LOZANO: Your Honor, the law is clear that in  
3 circumstances where witnesses have material evidence and are  
4 unavailable, they may be allowed to testify remotely via CCTV  
5 or Rule 15 deposition.

6 THE COURT: Under exceptional circumstances?

7 MS. LOZANO: Yes, your Honor. And we have exceptional  
8 circumstantial here.

9 As is set forth in today's letter and our motion, the  
10 government has for months communicated with the Bank of Ireland  
11 in an effort to secure the testimony of witnesses whom we  
12 interviewed in March of this year and whom provided material  
13 evidence for this case or will provide material evidence for  
14 this case. We have negotiated with the Bank of Ireland in an  
15 effort to have the witnesses travel here. When we originally  
16 spoke with the witnesses in Ireland, it was the government's  
17 understanding that they would be willing to travel here to  
18 testify. We have had conversations with the witnesses while we  
19 are interviewing them and articulated our desire to have some  
20 of them testify at trial. And at no time during the period  
21 that we were in Ireland were we were told that would not  
22 happen.

23 In addition, after our trip and for several months up  
24 until the beginning of September, we had been in communication  
25 with both the Bank of Ireland and one individual counsel for

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1 one of the witnesses. All of the witnesses ultimately obtained  
2 their own individual counsel as well.

3 In an effort to schedule trial preparation sessions  
4 and make arrangements to have them travel to the United States.  
5 It was clear that that was the government's intention. And  
6 until the beginning of September we did not have an  
7 understanding from the Bank of Ireland that the witnesses would  
8 not travel to the United States to provide this testimony.

9 THE COURT: And then what happened?

10 MS. LOZANO: After September we attempted to negotiate  
11 with the government with the Bank of Ireland in order to secure  
12 that testimony and convince the witnesses that they should  
13 travel here. We made offers of safe passage letters. We  
14 explored options.

15 THE COURT: Did there come a time where they said, no,  
16 we're not going?

17 MS. LOZANO: We don't know the answer to that, your  
18 Honor. It's unclear to us but it does appear that all  
19 witnesses simultaneously and with the bank right at the  
20 beginning of September if I'm remembering correctly,  
21 September 3rd, communicated to the government that for personal  
22 reasons they would not travel to the United States. But they  
23 were still willing to cooperate with the government and provide  
24 testimony in Ireland. Therefore, we engaged in negotiations  
25 and communications with the Bank of Ireland and through them



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1 with the witnesses in order to figure out whether there was a  
2 way that we could secure this testimony in Ireland and what  
3 process we would use.

4 Although we had been told on numerous occasions  
5 repeatedly that the witnesses were willing to provide  
6 assistance in Ireland, it had become abundantly clear in the  
7 last week and several days that in fact that was not the case.  
8 If witnesses agree to give testimony voluntarily in Ireland  
9 there is no requirement that the government submit a request  
10 through the Mutual Legal Assistance treaty. However, it has  
11 become clear now that and we have statements from all the  
12 witnesses through their counsel and or the Bank of Ireland  
13 saying they will not provide any testimony unless they are  
14 compelled to do so pursuant to the Mutual Legal Assistance  
15 treaty between the United States and Ireland.

16 THE COURT: And do you know why that is?

17 MS. LOZANO: We don't know why that is. We have asked  
18 that question and we have been told that it is for unspecified  
19 personal reasons that the bank does not feel at liberty to  
20 divulge to the government.

21 THE COURT: Are any of these individuals anything  
22 other than fact witnesses from the government's perspective?

23 MS. LOZANO: In terms of whether they're expert  
24 witnesses?

25 THE COURT: No. As to whether they have any exposure

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1 either regulatory or criminal exposure?

2 MS. LOZANO: At this point that is not something that  
3 the government believes. But certainly that is a possibility,  
4 which is one of the reasons why in order to secure the  
5 testimony we offered a safe passage letter.

6 THE COURT: What is the safe passage letter?

7 MS. LOZANO: It means if they were to agree to come to  
8 the United States to testify at trial they would not be  
9 subjected -- they would be allowed safe passage to come,  
10 testify in court and leave. During the period of tie they were  
11 here, they would not be subjected to the U.S. Government  
12 process for any other case or for this case.

13 THE COURT: Why do we need to do this? I understand  
14 that it's a little bit unusual but I've never seen this done in  
15 any case I've ever been involved with where there should be  
16 testimony by closed-circuit television in a criminal case. I  
17 know that's been done and as the defendant points out where  
18 it's been done, it's been in connection with cases involving  
19 individuals in the Witness Protection Program, individuals  
20 aligned with terrorist organizations or would have substantial  
21 criminal exposure. It's not to say that only in those very  
22 high profile criminal cases should it be allowed. It is  
23 frequently the case in this courthouse that there are witnesses  
24 that would rather not come or that are not cooperative and we  
25 don't make them appear on closed-circuit television. It's

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1 not -- from the respected of defendant.

2 MS. LOZANO: Your Honor, in response, I do want to  
3 point out that although counsel attempted to distinguish this  
4 case from other cases where CCTV testimony has been allowed by  
5 saying it's only with organized crime or under circumstances of  
6 a terrorism case, that outside of the circuit that is not the  
7 case. In the Sixth Circuit, in fact in the Benson case that is  
8 cited in our brief -- our motion, I'm sorry -- that CCTV  
9 testimony was permitted for a witness who was infirmed in a  
10 wire fraud and mail fraud case. It was not a terrorism case  
11 and had no organized crime.

12 THE COURT: So that's four or five examples.

13 MS. LOZANO: I just wanted to clarify the record  
14 because counsel raised that in his response.

15 The reason that it should be allowed here is because  
16 these witnesses are material. They, although we do have  
17 records and we have e-mails that we intend to introduce, these  
18 witnesses, each one of them, will provide unique testimony that  
19 is broader than the documentary evidence. And moreover, an  
20 example of that was mentioned in our letter of this afternoon  
21 where in order to prove that, that the documents will not prove  
22 that the defendant never alerted the bank to the fact that One  
23 Point and Ruja Ignatova proceeds and funds were flowing through  
24 the accounts. The documents won't show that because he never  
25 informed them. The witnesses will be able to testify to that.

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1 THE COURT: Well, it seems that the defense is willing  
2 to work with you in terms of getting that information before  
3 the jury. Why not agree on stipulated testimony or stipulated  
4 facts? I mean if there is going to be no dispute that  
5 Mr. Scott did not advise the Bank of Ireland of the Ignatova  
6 interests in the Minero funds, why do you need anyone to appear  
7 by CCTV to say that?

8 MS. LOZANO: That is not something that we have even  
9 discussed with counsel. It is not an offer that counsel made  
10 and it is not included in the defendant's response. In fact,  
11 the defendant's position is that everything that these  
12 witnesses say and their relevant evidence is included in the  
13 documents. Our position is that is not correct. The relevant  
14 evidence is also outside --

15 THE COURT: But what you are telling me is that what's  
16 not included in the document is what he didn't say. And if he  
17 didn't say it, then they won't know about it any way, right?

18 MS. LOZANO: That is one example. I was pointing to  
19 the one example that is in our letter today. There are  
20 multiple examples. There are witnesses who will testify that  
21 Mr. Scott told one witness at the Bank of Ireland what the  
22 intended investments of the Minero funds were and told a  
23 different person at the Bank of Ireland different investments.  
24 They were both misrepresentations and they were different  
25 misrepresentations. That is important.

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1 THE COURT: Isn't that in the document?

2 MS. LOZANO: Not all of the misrepresentations are in  
3 the documents, your Honor.

4 Your Honor, just to further explain the lack of  
5 documentary evidence of the defendant's failure to notify the  
6 bank that one point funds were flowing through the accounts.  
7 That is not something that the government has the ability to  
8 prove with the e-mails. There is just no way to put in all the  
9 e-mails and say he never notified them about this because there  
10 could be an errant e-mail that was deleted that we don't have  
11 from a different account.

12 However, a witness, the person who was his  
13 representative at the bank is the person that the defendant  
14 communicated with most at the bank, will be able to say, I was  
15 never notified about this. He never notified me and he didn't  
16 notify other people about the bank that the Minero funds and  
17 therefore the accounts that Bank of Ireland was holding were  
18 moving and laundering

19 THE COURT: Did those individuals know that?

20 MS. LOZANO: Did the Bank of Ireland individuals know  
21 that?

22 THE COURT: Yes.

23 MS. LOZANO: No. What they're going to say is that  
24 they were never notified that one point and Ruja Ignatova and  
25 funds related to them were flowing through the accounts.

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1 THE COURT: As I recall from the defense papers, two  
2 of these four individuals never even communicated with  
3 Mr. Scott; is that correct?

4 MS. LOZANO: That's correct, your Honor. That is  
5 correct.

6 THE COURT: So, what are they going to bring to the  
7 table?

8 MS. LOZANO: Well, they never met him in person.  
9 Mr. Bently did have communications with the defendant. And in  
10 fact, significantly, he had one communication that only he and  
11 Mr. Scott were on, only he from the side of the Bank of Ireland  
12 regarding the defendant's commitment to notify the bank about  
13 any investors holding ten percent more of in his funds. And I  
14 just want --

15 THE COURT: But if the entirety of their  
16 communications were through e-mail or whatever other platform,  
17 what more could Begley possibly say beyond those  
18 communications?

19 MS. LOZANO: It's very, it's qualitatively different  
20 to have an e-mail read to the jury out of context for them to  
21 kind of interpret as they will versus a witness who will say  
22 this is the response I got. And by the way, the reason I asked  
23 for it was I received a request from whatever -- for this  
24 information because it related to KYC and ANL procedures about  
25 the UVOs are the ultimate beneficial owners of the funds. And

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1 so it is important for all of the witnesses. There's just a  
2 qualitative difference having e-mails read in a vacuum to the  
3 jury versus having a person --

4 THE COURT: Let's talk about Begley. If Begley didn't  
5 testify aren't you already going to have someone from the Bank  
6 of Ireland say, we were concerned. Obviously, this was a high  
7 risk account. We were concerned about the UVOs and he never  
8 told us about the Ignatovas. So this also sounds a little  
9 cumulative, doesn't it?

10 MS. LOZANO: No. As we we've set forth in our motion,  
11 each witness has unique information to provide and we, the  
12 government, will endeavor to keep the testimony of each of the  
13 witnesses narrowed so that it is not cumulative one of the  
14 other.

15 To answer the Court's question, yes, if we were able  
16 to have another witness testify about the reasoning for the  
17 request of the ten percent UVO in the identification, that  
18 would be something that would replace, could replace  
19 Mr. Begley's testimony. However, Mr. Begley is the only one on  
20 that e-mail with the defendant when the defendant commits to  
21 doing just that.

22 THE COURT: There is no objection to those e-mails  
23 coming in and is it Ceannt that is how you pronounce her name,  
24 that's senior to Mr. Begley?

25 MS. LOZANO: Yes.

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1 THE COURT: But in the same function who also has  
2 testimony about Mr. Scott's failure to provide information to  
3 Ruja Ignatova?

4 MS. LOZANO: She was the primary point of contact.  
5 But to be clear, every one of these witnesses take the same  
6 position. They are all in Ireland. They are refusing to come  
7 here and they are in fact refusing to do anything except  
8 provide testimony that is compelled pursuant to an MLAT.

9 and I just want to make one thing clear in case it  
10 wasn't before. Based on everything we know now, we believe  
11 they are only fact witnesses. There isn't -- and that is why  
12 we offered them a safe passage letter. We believe they are  
13 fact witness and we want them to come testify.

14 THE COURT: OK. Is the other individual that never  
15 communicated or --

16 MS. LOZANO: Ms. Sands. To correct the record, we  
17 looked back and I believe Ms. Sands, her correct title is the  
18 head of AML advisory at the bank which is a little bit  
19 different than the way it was described in the motion as the  
20 bank's head of AML.

21 THE COURT: And what does, remind me what her  
22 anticipated testimony would be.

23 MS. LOZANO: Well, her anticipated testimony would be  
24 to talk about the, will describe the bank's internal KYC system  
25 and the Know Your Customer system and AML system and Anti Money



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1 Laundering system and what kinds of information are required,  
2 is required for certain kinds of bank accounts. She would set  
3 the context for the requests that were made of the defendant's  
4 bank accounts and describe the rationale from the bank's  
5 perspective for requesting identification of UBOs over ten  
6 percent.

7 THE COURT: Now, I imagine, although, I've never met  
8 any of these people that both Ms. Ceannt and and Mr. Collins  
9 would be able to testify about that stuff as well.

10 MS. LOZANO: They would have knowledge about it, but  
11 they --

12 THE COURT: That is what they do everyday, right?

13 MS. LOZANO: Well, they are in a different position.  
14 So, they certainly, in their positions need to be knowledgeable  
15 about that. But in terms of who is the person who actually  
16 works with the bank's internal KYC system, who is the person  
17 who understands what kind of accounts need what kind of due  
18 diligence, that would be Ms. Sands because that's her function  
19 at the bank.

20 And to go back to one of the Court's questions  
21 previously, if the defendant were willing to consider some kind  
22 of stipulation about this testimony that we have been talking  
23 about, the unique testimony outside of the e-mails and  
24 documents, we're certainly willing to consider it. But the  
25 government hasn't seen any indication that the defendant would

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1 be willing to do that. And in fact, his position and his  
2 response is that the witness testimony and the e-mails and  
3 documents are one in the same.

4 THE COURT: Let me ask you this. Do you have a  
5 preference as between the Rule 15 depositions or close-circuit  
6 television? Are you asking in any particular order?

7 MS. LOZANO: Yes. We are asking for the  
8 closed-circuit television --

9 THE COURT: OK. Thank you.

10 MS. LOZANO: -- as priority.

11 (Recess)

12 THE COURT: Please be seated.

13 So was an agreement reached while I was away?

14 Mr. Devlin-Brown.

15 MR. DEVLIN-BROWN: Thank you, your Honor.

16 In our response we basically had two arguments as to  
17 why the government should not be permitted to use this really  
18 extraordinary step in a motion they filed a month before trial.  
19 And the two arguments were basically that this was going to  
20 be -- sorry. One moment, your Honor.

21 The two arguments were basically going to be that this  
22 was going to be something the government should have handled  
23 much earlier on in the process.

24 And the second argument made as to why this was unfair  
25 and unwarranted is that the testimony was not nearly as

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1 material as the government had represented in its motion.

2 And the thing about this, your Honor, is reading the  
3 submission filed just before court, both of those arguments are  
4 now considerably stronger. I want to touch on both of them.  
5 We've you talked mostly about the materiality point. But the  
6 point about the government not taking the appropriate steps in  
7 a timely fashion is even more clear if you look at the letter  
8 that Ms. Lozano submitted. In the original submission, your  
9 Honor, from the government, they had represented that they've  
10 reached out to the Bank of Ireland in April to ask that these  
11 witnesses be available for trial in October. They've now  
12 clarified in a footnote -- this is Footnote One on page two of  
13 their motion -- that they did not in fact in April ask for any  
14 specific individuals as witnesses. They made a general  
15 statement to the Bank of Ireland that they wanted witnesses.  
16 And they in fact, specifically, identified the four individuals  
17 they're talking about now, three of them in August and one in  
18 September. And shortly after they identified the  
19 individuals -- and it sounds like the individuals got  
20 counsel -- those individuals came back and said no. So this is  
21 not a request that the government pursued in a timely fashion.  
22 They should have pursued this much, much earlier.

23 There's another point though on the government's  
24 efforts to pursue this that we saw from the reply letter that  
25 they have any more concern. Because in the government's

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1 filing, your Honor, they represented that these witnesses would  
2 voluntarily agree to testify in Ireland or have their  
3 depositions taken. They would do this voluntarily.

4 If you look now at rely submission, it's quite clear  
5 that at all times that we can tell -- and I invite the  
6 government to correct me -- but that at all times the Irish  
7 witnesses said they wanted it done pursuant to an a MLAT which  
8 is different than a purely voluntary step.

9 I direct the Court the first sentence on page three of  
10 their letter. It said:

11 In early September DOI counsel communicated to the  
12 government that Ceannt, Sands and Begley were willing to  
13 provide further assistance in Ireland in accordance with the  
14 MLAT procedures.

15 And then they go on to say, you know, of course, it's  
16 voluntary in spirit. The MLAT process can be much easier. But  
17 the fact of the matter is these witnesses have always said they  
18 need an MLAT and the MLAT was filed on Monday by the government  
19 seeking closed-circuit testimony it seems, not even seeking a  
20 deposition.

21 So, for the government to pursue these steps so late  
22 in the game, your Honor, I think really does have to be  
23 factored into it given the prejudice this could cause  
24 Mr. Scott.

25 But now I'd like to go to the second point because I

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1 actually think it's really fundamentally the most important  
2 point, and that is the materiality of the witness testimony  
3 compared to the evidence that will already be available from  
4 documents.

5 And I want to stress, I mean this is not a question of  
6 whether it's relevant evidence, whether it should be excluded  
7 under the rules of evidence as being too cumulative for that  
8 purpose. It's not about whether the government's case might be  
9 a little bit, have a little bit more color if they had some eye  
10 witnesses in the courtroom or on video describing what the  
11 e-mails say. It's not about that. The Second Circuit has made  
12 clear that it has to be material. And this is a problem then  
13 that the government ignores really when they cite the law. It  
14 has to be necessary to prevent a failure of justice.

15 And materiality, that concept has different meanings  
16 in different areas of the law. But we cited a case to you in  
17 the Southern District court that that means it's highly  
18 relevant to a central issue. And what the government's  
19 argument now boils down to again, articulated in the letter of  
20 today is what they think is highly relevant still is the  
21 failure of Mr. Scott to say certain things, the failure of  
22 Mr. Scott to tell them that in fact the money supposedly came  
23 from one point and the failure of Mr. Scott supposedly again to  
24 identify new investors in his fund as he had according to the  
25 government committed to do. And his agreement to do it is in

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1 one of the e-mails. So it's the absence of evidence.

2 And if that's what the record is of the evidence at  
3 trial, your Honor, Mr. Scott cannot argue in defense that oh,  
4 of course, he told the bankers that this money all came from  
5 one point. There would be zero evidentiary basis for it. And  
6 the same thing with respect to whether he provided that  
7 information on new investors. If it's not in the e-mails, if  
8 Mr. Scott doesn't testify to it and whether or not he  
9 testifies, we can represent right now he will not make those  
10 statements that he provided that information on One Coin or  
11 identified new investors. There's no evidentiary basis for a  
12 party to take a position other than this information was not  
13 provided.

14 So that what you're left with, your Honor, I think in  
15 terms of both the government's delinquency really in pursuing  
16 this as aggressively as they should have and the significance  
17 of the testimony on top of the documents. So now here we are  
18 three weeks and change before trial and MLAT has been submitted  
19 to the Central Authority in Ireland, I guess, on October 8.  
20 We, of course, haven't seen the MLAT. It sounds like this  
21 would be touch and go for a while if it could even happen  
22 during the trial. How it would happen, I have no idea. The  
23 government has previously suggested that if this was granted  
24 then, of course, one of the prosecutors could go out and ask  
25 the questions in Ireland whereas, we would be asking them from

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1 here and that strikes us as completely unfair because Mr. Scott  
2 if he is not going to have the direct right to be in front of  
3 the party, then the government shouldn't either.

4 But the government's raised a fair response to that  
5 just in our conversation. That is, how are you going to deal  
6 with all these documents then? I don't know. I guess we could  
7 have a special master, maybe a law clerk, court personnel, but  
8 these are complicated things. And for the Court to now grant  
9 the government's motion even in part, it's still going to be a  
10 touch and go situation depending on what Ireland does. And we  
11 may not know about it until the very last minute.

12 I'm happen to address any other questions but I really  
13 don't think this extraordinary remedy --

14 THE COURT: Now, you've indicated in your papers I  
15 believe, that you are not going to object to these various  
16 documents from the Bank of Ireland coming in as business  
17 records; is that right?

18 MR. DEVLIN-BROWN: So any of the documents that have  
19 Mr. Scott's statements to a Bank of Ireland person or their  
20 response to Mr. Scott which would be relevant to his state of  
21 mind, we are not going to object to anything like that at all.  
22 As to any of their personal communications between people in  
23 the Bank of Ireland, we may object on relevance or other  
24 grounds but we are not going to challenge the authenticity of  
25 these documents. We have no reason to believe they're anything

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1 but that.

2 So I can assure the Court we will never say those  
3 documents shouldn't come into evidence because we don't have a  
4 Bank of Ireland records custodian testifying as authentic. And  
5 I also think the MLAT procedures that they used to get the  
6 documents self-authenticate anyway. But that's not going to be  
7 an issue.

8 THE COURT: What about the suggestion that I floated  
9 that the parties agree to stipulated testimony from one or more  
10 of these witnesses; that something you are willing to pursue?

11 MR. DEVLIN-BROWN: I am willing to discuss it with the  
12 government and I actually do take a little bit of an issue that  
13 the defense was never willing to do this because actually on  
14 the very cause first call we had about this several weeks back  
15 with Mr. DiMase -- I don't know what else was on it -- we said  
16 would a stipulation be possible and that was essentially  
17 brushed off with words to the effect of "wouldn't you like  
18 that" or something to that effect.

19 So the lack of discussion of stipulations, it's never  
20 been proposed by the government. The government has wanted  
21 these witnesses live. We'd be willing to discuss the  
22 stipulation, your Honor, but I think that gets to a point where  
23 it starts to become a little unfair to the defense because we  
24 never had a chance to question those individuals. We've seen  
25 notes. I think one we attached to the motion. But the notes



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1 are often vague and it's a little unclear. So to ask us to  
2 agree to stipulate here is exactly what this person would say,  
3 I don't know that we could promise that but we'd certainly talk  
4 to the government about it.

5 THE COURT: Are you talking about handwritten notes by  
6 any of those individuals? If so, I don't believe I've seen  
7 them.

8 MR. DEVLIN-BROWN: The agent or some government  
9 personnel took handwritten notes over there and then they were  
10 produced to in some cases, maybe all cases, typed memoranda.

11 THE COURT: Is this when they go to the binder and go  
12 through each tab?

13 MR. DEVLIN-BROWN: Yeah. Then they also wrote-up 302s  
14 or the equivalent for what these witness would say.

15 THE COURT: I don't believe that I've seen that.

16 Thank you, Mr. Devlin-Brown.

17 Ms. Lozano, how is this supposed to work?  
18 Technically.

19 MS. LOZANO: Your Honor, as we noted in the letter,  
20 submitted the MLAT yesterday and we have not yet received a  
21 response from the Central Authority of Ireland. So it is not  
22 clear to us exactly how it would work. But we do know that  
23 there is the ability, if the MLAT is granted and the request is  
24 granted, there is no specific venue in which this testimony  
25 needs to be taken. It can be taken in a courtroom. It can be

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1 taken in an office. It can be taken in a different venue. So  
2 that is open to negotiation and as is the scheduling. We just,  
3 we don't have clarity because we haven't heard back from the  
4 Central Authority.

5 THE COURT: By "technically" I meant technologically.  
6 How is this supposed to happen technologically? I mean, will  
7 there be a split screen? And who is on the split screen? Will  
8 there be cameras in the courtroom? How is the jury supposed to  
9 see this? Have you thought about technologically how this  
10 happens?

11 MS. LOZANO: My understanding is that there would be a  
12 feed and it would be live. I'm not sure whether it would be a  
13 split screen. To be honest, we hadn't really gotten into that  
14 level of detail about the practicality of what the screen would  
15 look like. We do know that it -- obviously, we would want to  
16 have a prosecutor there and we never suggested that defense  
17 couldn't attend. We simply said it was our intention to send  
18 someone there were the Court to grant the motion.

19 THE COURT: Easy for you to say we'll have a  
20 prosecutor there but my understanding is the defense team is  
21 three and they are going to be busy enough here. A little bit  
22 unfair to have a prosecutor in the room with the witness and  
23 whether it's going to be Mr. Devlin-Brown or Ms. Stanley or  
24 Ms -- cross-examine from across the pond --

25 MS. LOZANO: The prosecution team is also three. And

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1 like I said, we didn't opine or suggest that the defense  
2 couldn't attend. We said what our intention was, and that is  
3 our intention.

4 I would like to, if the Court would allow me, like to  
5 address Mr. Devlin-Brown's two main page points very, very  
6 briefly.

7 One, he is correct that we clarified in our letter  
8 that our April request to the Bank of Ireland didn't  
9 specifically identify the witnesses. What we said was we had  
10 interviewed eight witnesses and we were considering which ones  
11 to call. So we notified the Bank of Ireland that we did intend  
12 to call witnesses and we wanted to discuss with them  
13 arrangement for preparation and for travel to New York in the  
14 United States to testify. That was clear as of April. We  
15 never at that point or through September received any sort of  
16 communication that any of the witnesses, any of the eight  
17 witnesses was unwilling to travel to the United States to  
18 testify. And then we got to September. That is our first  
19 notification that they were unwilling to travel.

20 THE COURT: Have you received documents from the Bank  
21 of Ireland prior to the indictment?

22 MS. LOZANO: Yes, your Honor. Prior to the  
23 indictment? I believe so.

24 MR. DEVLIN-BROWN: And your Honor may wish to clarify  
25 if it's by MLAT in which case the Bank of Ireland probably had

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1 no choice other than to comply which --

2 MS. LOZANO: I do know that we submitted multiple  
3 MLATs to Ireland and received documents in response to those  
4 MLATs. Whether we had received all of the records before  
5 Mr. Scott's indictment, I don't know. I would have to go back  
6 and look at our requests and what we got in response to those  
7 requests. But we had received some records from Bank of  
8 Ireland via MLAT before the indictment.

9 THE COURT: And answer this if you would. I don't  
10 know all the facts in this case. How central is the role of  
11 the Bank of Ireland in this alleged scheme?

12 MS. LOZANO: OK. And that was the second point I am  
13 glad you asked that question. This is a \$400 million money  
14 laundering scheme. The heart of the case against Mr. Scott is  
15 the fact that he hid from financial institutions and fund  
16 managers the fact that the \$400 million constituted criminal  
17 proceeds, specifically, the -- proceeds.

18 And the bank itself, Bank of Ireland was involved in a  
19 large portion of that \$400 million in some transaction or  
20 another because there were multiple different financial  
21 institutions through which Mr. Scott laundered these funds.  
22 The bank of Ireland had a large proportion of the \$400 million  
23 flow through their accounts.

24 THE COURT: The largest?

25 MS. LOZANO: Approximately three hundred million. So,

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1 three quarters approximately.

2 The fact that the defendant chose to commit this crime  
3 internationally or these crimes internationally and in fact,  
4 the other evidence shows he deliberately avoided the United  
5 States and engaging in conduct in the United States should not  
6 be rewarded by preventing the government from producing  
7 material evidence that is located abroad because he chose to  
8 commit his crimes abroad.

9 THE COURT: Very, very many cases in this and other  
10 courthouses around the country involve international  
11 transactions. So far as I know, I've not been, not one has  
12 been brought to my attention that included closed-circuit TV  
13 testimony.

14 MS. LOZANO: Yes, your Honor. This is a unique case.  
15 This is an enormous money laundering scheme with an  
16 international wire fraud underpinning it that involves dozens  
17 of countries, many co-conspirators. This is a unique case  
18 where most of our evidence is located abroad.

19 THE COURT: That's not so unique. But let me ask you  
20 this. Why did you wait until April of this year to talk to  
21 these folks?

22 MS. LOZANO: March of this year.

23 THE COURT: Three quarters of the four hundred million  
24 dollars flow through the Bank of Ireland.

25 MS. LOZANO: I do know that we had received as I said

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1 multiple productions from the Bank of Ireland. Once we  
2 received the e-mails that we were able to go through, we  
3 decided that we wanted to speak to certain witnesses, the  
4 witnesses who dealt with this account and who had knowledge  
5 about this account and we actually were able to specifically  
6 identify certain people that we wanted to speak with. At that  
7 point and if memory serves me correctly, I believe it was in  
8 October of 2018, we submitted supplemental MLAT requests to the  
9 Irish government in order to obtain interviews with these  
10 witnesses. It is unclear to me how long the processing of that  
11 request took but I do know that it was a somewhat lengthy  
12 process because just the logistics involved, the Central  
13 Authority in Ireland contacted the bank. The bank expressed a  
14 willingness to provide these witnesses and make them available  
15 for our interviews in their offices and the Central Authority  
16 of Ireland then stepped back and allowed us, the government, to  
17 talk directly and make arrangements directly with the Bank of  
18 Ireland about how to do these interviews and where, the  
19 scheduling of the interviews, the people that would be  
20 interviewed. And so that was a somewhat lengthy process. But  
21 we did as soon as we identified the witnesses submitted an MLAT  
22 requesting the interviews. And then when we were given the  
23 ability to negotiate with the Bank of Ireland about setting up  
24 the interviews, we did that.

25 THE COURT: Do you know whether the Department of

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1 Justice and state I believe it's state whether it's expediting  
2 your MLAT request? Assuming I say OK. Go ahead and provide  
3 the testimony of these folks via CCTV, is it ever going to  
4 happen?

5 MS. LOZANO: We don't have a response yet. That will  
6 would inform us whether this request if granted by the Central  
7 Authority could happen within our timeframe. We are hopeful  
8 and optimistic and we made to clear to the Office of  
9 International Affairs person who was handling our request what  
10 our timeframe is and that we have a trial and we specifically,  
11 included the trial date, the MLAT request and asked for the  
12 testimony to occur during the trial.

13 And your question, I do have an answer somewhat about  
14 the technology. We have been informed that there would be a  
15 camera here that would beam and transmit a feed to Ireland and  
16 then Ireland would --

17 THE COURT: Who is on the camera?

18 MS. LOZANO: Well, that I don't have an answer to  
19 that. I imagine that it would be, on the Irish side it would  
20 be the witness and whatever attorney asking questions. And on  
21 this end I believe it have to be the entirety of the courtroom  
22 so that the jurors could see the testimony and defense counsel,  
23 if defense counsel stayed back, as well as the Court could view  
24 the testimony.

25 And this is the way that the CCTV set up worked in

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1 both cases cited in our motion, the Homsa and the Guyant case.

2 THE COURT: Don't you more specifically normally with  
3 respect to Ms. Ceannt and Mr. Collins, tell me with some  
4 specificity what they would say in addition to what's in the  
5 documents that presumably would come in.

6 MS. LOZANO: Yes. Contrary to what counsel suggested  
7 that the most important piece of the testimony is going to be  
8 failure to notify the bank about one point funds. In fact, as  
9 we set out in our motion, that is just one example of testimony  
10 that will not be, that is not available in the documents.

11 Also, we have evidence from both Ceannt and Collins  
12 about representations made to them directly about the ultimate  
13 investments that the defendant was going to make with the money  
14 in the funds. Those misrepresentations were not what in fact  
15 happened with the money. And in fact --

16 THE COURT: Isn't that in the documents? Doesn't it  
17 say something about telecommunications --

18 MS. LOZANO: No.

19 THE COURT: What's not in the documents?

20 MS. LOZANO: Well, Ms. Ceannt, as is set forth in my  
21 declaration, will testify that the investments would be in real  
22 estate -- well, financial services which is something that  
23 Collins also heard and is also in the documents, real estate  
24 which does not appear to be in the documents and companies  
25 which also does not appear to be in the documents. And



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1 Mr. Collins understood it to include telecommunications, also  
2 not included in the documents and obviously different than what  
3 Ms. Ceannt understood.

4 THE COURT: But the representations that he did make,  
5 your theory is that they were false also?

6 MS. LOZANO: Yes.

7 THE COURT: So they have told them in documents I am  
8 going to invest in -- I am just making this up -- aluminum,  
9 financial services companies and soy beans which your theory is  
10 that is not the case and he also told them in person that he  
11 not going to invest in real estate and start-up companies which  
12 your theory is also false not and that's more of the same.

13 MS. LOZANO: No, it's not. I think it is indicative  
14 and material to the misrepresentations and the fact that -- the  
15 fact that there wasn't one consistent lie means that even the  
16 defendant couldn't keep that straight. And it goes to the  
17 reliability of that information and whether in fact he ever  
18 might have intended to invest in those sectors. Of course the  
19 government's position is these were not investment funds. But  
20 it is relevant and important that the defendant made multiple  
21 lies to different institutions, to different people within an  
22 institution and --

23 THE COURT: Are there going to be people who will  
24 actually come here and sit in the witness stand and say he made  
25 multiple lies to me?

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1 MS. LOZANO: From our institutions?

2 THE COURT: Yes.

3 MS. LOZANO: Yes. But this is important because the  
4 testimony from these witnesses, first of all Ceannt and Collins  
5 to be clear, they actually met defendant and he told them the  
6 lies to their face, including the lies about having a presence  
7 in Ireland of a hundred people and an office there which, of  
8 course, never happened.

9 And the government's position is that that was not  
10 something that the defendant intended to do. It was simply  
11 another misrepresentation.

12 THE COURT: How is that material to this scheme, that  
13 particular misrepresentation?

14 MS. LOZANO: It is material because it provided or I  
15 think it was intended to provide comfort to the Bank of Ireland  
16 with another indicia of the legit payee of the defendant's  
17 purported private equity funds.

18 Your Honor, just two points. With respect to  
19 materiality, the government goes back to, the heart of this  
20 case is a money laundering scheme where the defendant hid the  
21 fact that the money flowing through private equity funds and  
22 accounts via sourced from one point. And that the fact that he  
23 did not notify, tell the bank, disclose that to the bank is at  
24 the heart of our misrepresentation. That is what he failed to  
25 do. And e-mails and documents will not be able to establish

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1 that and --

2 THE COURT: I believe that there has been a  
3 representation by Mr. Devlin-Brown that they are not going to  
4 argue that he told them that.

5 MS. LOZANO: I didn't understand that Mr. Devlin-Brown  
6 said that but he may have. In any case it is the government's  
7 burden to prove this case. And without a witness on the stand  
8 saying, no, he never called, he never e-mailed from a different  
9 address, he never sent a message with somebody else about the  
10 source of the funds being from one point, the government is  
11 unable to establish that with simply the documents and e-mails  
12 and we want to be able to argue it. And we want to be able to  
13 say, as Ms. Ceannt told you is the point of contact with the  
14 Bank of Ireland. Mr. Scott never told her in any way, in any  
15 sort of phone call, e-mail, any writing, any face-to-face  
16 contact about one point.

17 And just one last point regarding the why it matters  
18 whether he had an Irish office or a hundred people and I  
19 referenced the indicia's legitimacy that Mr. Scott kind of  
20 advanced. And that brings me to another reason why it's very  
21 important for Ms. Ceannt and Mr. Collins to testify because  
22 they met him in person. And they will testify that one of the  
23 reasons that they felt comfortable opening accounts at their  
24 bank for him is because he was very well-spoken. He had  
25 credentials as a partner from multiple ex-partners from

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1 multiple different law firms and he presented very well. And  
2 part of that package was and I am going to open an office in  
3 Ireland. I am going to have a hundred employees.

4 THE COURT: I, frankly, don't know that AML, KYC  
5 professional would say, you know, this otherwise was a very  
6 high risk, very sketchy transaction that a particular applicant  
7 presented but he said he was going to build a factory in this  
8 district and therefore, you know that sort of put me over the  
9 top.

10 MS. LOZANO: I'm not suggesting that, your Honor.  
11 What I'm saying is that is just an example of providing the  
12 context for these e-mails and documents and explaining to the  
13 jury how this process happened and what information the  
14 defendant was providing to the bank in order to get what he  
15 wanted which was opening accounts. And it goes to just another  
16 example of his lies and the government expects to present  
17 evidence of Mr. Scott's pattern of lies to multiple different  
18 institutions, to multiple people and this just is just another  
19 one of those lies.

20 THE COURT: Thank you.

21 Mr. Devlin-Brown.

22 MR. DEVLIN-BROWN: I'll try to be brief, your Honor.  
23 This is not central evidence to the government's case. The  
24 government didn't even speak to these people until late March  
25 of last year. They spoke to them after they were in a court

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1 conference, your Honor, arguing that a July trial date was  
2 impossible. So this was not evidence that they had at the time  
3 to support their indictment.

4 And if your Honor's concerned about my excluding  
5 really the best live evidence of, quote/unquote, lies that  
6 Mr. Scott made to financial services companies, absolutely,  
7 not. The central evidence is one thing that the government,  
8 unlike the Bank of Ireland, has hammered on in almost every  
9 brief they've submitted to the Court. And that is Apex Fund  
10 Services which was a due diligence provider that Mr. Scott and  
11 his funds engaged to do due diligence on investors. And that's  
12 Paul Spendiff. He is going to come to the courtroom, testify  
13 live, not only about all of the things that Mr. Scott said his  
14 funds were about, not only about some of the same documents  
15 that went to the Bank of Ireland, but he is going to testify  
16 that at some point he became suspicious and thought Mr. Scott  
17 was not being credible and there's this recorded conversation  
18 between the two of them.

19 Obviously, we'll dispute these points but there are  
20 going to be live witnesses galore. And the idea that these  
21 Bank of Ireland employees, two of them who never met Mr. Scott,  
22 the other two who met him once is central in any way is just  
23 not a fair characterization.

24 THE COURT: But if the government is correct in their  
25 representation that three quarters of the purported illegal

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1 ill-gotten gains traveled through the Bank of Ireland, then  
2 sort of regardless of their -- which they ran -- it would seem  
3 it is fairly central evidence; no?

4 MR. DEVLIN-BROWN: I don't think so, your Honor. The  
5 government is going to allege that these funds were essentially  
6 not really private equity funds but were being used to launder  
7 money for one point. And the government is going to have bank  
8 records and other financial records that show money going into  
9 various accounts, money going into the Bank of Ireland  
10 accounts, money going out to other places. These witnesses in  
11 all the things that the government has proffered about what  
12 they are going to testify to, they are not going to talk about  
13 what Mr. Scott did with those funds or any of the investments.  
14 That would come from other witnesses.

15 And I want to go to a couple of representations that  
16 Ms. Lozano said were key because this just keeps shifting  
17 what's so important about these witnesses. The last thing we  
18 heard was because Mr. Scott was there in person and he had some  
19 credibility of someone -- that wasn't what they put in their  
20 papers. They just keep changing the theory. And a couple of  
21 things she did say, your Honor, very much are in documents. I  
22 know some of these exhibits were sealed, your Honor, but if you  
23 have Exhibit A to our opposition --

24 THE COURT: Hold on. OK.

25 MR. DEVLIN-BROWN: So the Exhibit is actually a number

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1 of e-mails and other things shown to the witnesses. If you go  
2 part way through there's a company questionnaire.

3 THE COURT: Yep.

4 MR. DEVLIN-BROWN: So this is a questionnaire that  
5 Mr. Scott and his team filled out and e-mailed to the Bank of  
6 Ireland. For number one, principle activities of the  
7 company -- it says please see attached mission statement --  
8 which we'll get to in a moment -- has lot of our information  
9 filled out here including number nine, number of employees  
10 expected in five years. For all entities under the holding  
11 structure about one hundred.

12 If you then turn to the next page, the Minero Equity  
13 Investments Missions Statement, Ms. Lozano had said oh, the  
14 only thing that is in the writing was financial services but in  
15 fact, orally other types of investments were discussed which,  
16 frankly, I don't think is a particularly powerful point. But  
17 if you look at the mission statement, that's just not true  
18 either.

19 The paragraph that starts at the bottom says the  
20 primary objective is to invest into controlling positions of  
21 company in the financial services industry. It goes on to  
22 describe some of those new currencies and to improve, grow and  
23 building great companies. I won't read the entire thing, your  
24 Honor, but talks here about growing and building great  
25 companies. It talks about helping companies, quote, in all

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1 phases of developing and achieve their full potential. There's  
2 lots here to work on if the government's theory is Mr. Scott  
3 never intended do any of these things.

4 One final point and then I'll sit down. Because I  
5 respectful submit that the Court's question about technology  
6 really goes much deeper than that can we set it up. The  
7 Supreme Court -- sorry -- it's the statute that Congress passed  
8 permitting closed-circuit testimony permits two-way testimony.  
9 Because it seems a little artificial because both are  
10 infringements on the defendant's real confrontation clause,  
11 right? But the idea in these extraordinary cases is at least  
12 the person being cross-examined way over there can see a  
13 picture of the defendant and the defendant can look them in the  
14 virtual eye while that's happening. That would be critical and  
15 that would be undermined dramatically if a lawyer for the  
16 prosecution team were to go over there and do the questioning.

17 Also, by the way, with all respect to Ms. Stanley, she  
18 probably doesn't want to be disbarred before she is even barred  
19 and probably can't question witnesses here or any where else  
20 during the trial.

21 But it's not really just a question of me or  
22 Mr. Garvin. If the government is a party to the case, right?  
23 And so if one party is physically present with the witness and  
24 the other party, meaning Mr. Scott, does not get to be present  
25 during that testimony and of course he needs to be before the



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1 jury, that's a significant infringement.

2 Your Honor, maybe there's an answer to this. I mean  
3 these start to get into complex questions of constitutional  
4 law. There's very little precedent. It almost all comes from  
5 terrorism cases. In fact, the government's applicable law  
6 section here was literally almost -- from a terrorism brief one  
7 of two district court cases here.

8 Is this the case that warrants getting into these  
9 conflicts, constitutional questions for some Bank of Ireland  
10 employees who, frankly, the government only got documents for  
11 via MLAT had to go to Ireland to meet and really should have  
12 pursued earlier having a process kickoff with an MLAT that was  
13 issued yesterday trying to get closed-circuit testimony is just  
14 not warranted in this case. The government has ample evidence  
15 on the Bank of Ireland and in this case without the need for  
16 live witnesses.

17 MR. DIMASE: Your Honor, may I just say one very brief  
18 thing?

19 THE COURT: Sure.

20 MR. DIMASE: I just think that this isn't a terrorism  
21 case is missing the point. Materiality has to be looked at in  
22 the context of the case before the Court. This is a money  
23 laundering case. Mr. Scott laundered approximately \$300  
24 million through this bank. It's not the largest bank to be  
25 victimized by laundering money through it, one of the most

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1 significant. I think probably it is the most significant. And  
2 to put the government in a position where it can't call a  
3 single witness from that bank, period, full stop, to describe  
4 how Mr. Scott accomplished that in a money laundering case  
5 where the entire issue is the steps that Mr. Scott took to lie  
6 to banks to move money through the funds. I just don't see how  
7 anyone can credibly argue that is material testimony. There  
8 are critical lies and omissions that Mr. Scott made to these  
9 witnesses that are not in the documents that can't be proven  
10 some other way. It's a money laundering case and this is one  
11 of the most substantial banks involved in the case.

12 I just think on the materiality point, I don't think  
13 carrying it to a terrorism case is the issue. Looking at this  
14 case, it is critical testimony.

15 THE COURT: But the point remains, right, this doesn't  
16 happen everyday. This happens almost never in every white  
17 collar case involving international transactions, international  
18 banking is going to have issues precisely like this. And there  
19 have been any number of such cases tried certainly in this  
20 courthouse where the government didn't propose to use  
21 closed-circuit television testimony. Even if I grant you, the  
22 point that it's material where are the exceptional  
23 circumstances?

24 MR. DIMASE: The fact they weren't coming. In those  
25 other cases may well be the witnesses came. I'm not going to

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1 comment on whether it's surprise or not that they've decided  
2 not to come but they have in fact said that they're not coming.

3 THE COURT: It seems terribly surprising to me if  
4 they're the victim and they're essentially lawyering up and  
5 rounding the wagons.

6 MR. DIMASE: Judge, we have not gotten a significant  
7 understanding of what the reasons are behind it. But I think  
8 that may well account for why you're not seeing it in other  
9 cases. A witness is available to come.

10 THE COURT: OK. Well, here is what I think. It is  
11 becoming clear to me over the course of this conversation that  
12 this is perhaps something that I can't decide now. It may well  
13 be something that is trial specific. So almost in the nature  
14 of a motion in limine that can be raised at any point, I am  
15 particularly concerned about how this would happen  
16 technologically. I don't think there is any -- with respect  
17 that, I am very concerned about preserving Mr. Scott's  
18 constitutional rights. He has confrontation rights, testimony,  
19 remote testimony and the progressive circumstances can be very  
20 awkward, can be very dodgy in terms of the technology working  
21 appropriately in terms of counsel's ability to properly and  
22 effectively cross-examine. I guess that's something that we  
23 haven't even discussed. I am concerned about the government's  
24 suggestion that one of your team be there. But it appears as  
25 though the defense team will not have sufficient resources to

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1 have an individual there. I take Mr. Devlin-Brown's  
2 representation and his take him at his word. So there are even  
3 if I were to grant you the ability to call one or more of these  
4 witness, I may ultimately decide that the technology that's  
5 suggested would not be fair to Mr. Scott.

6 So it is my recommendation that you pursue that  
7 question and present precisely or as precisely as you can how  
8 it is that technologically if I were to allow this testimony,  
9 it would happen. And I would ask for further and I would also  
10 recommend by way that you continue to pursue as aggressively as  
11 you can, the MLAT request. And I'm not suggesting that I will  
12 grant it but, obviously, you are going to want to be ready if I  
13 do. And I would ask for further briefing from the government  
14 or further information from the government concerning precisely  
15 what additional testimony in addition to the records or the  
16 documents would propose or suggest would be provided by these  
17 witnesses.

18 I would also recommend that you pursue with  
19 Mr. Devlin-Brown, alternative methods by obtaining or providing  
20 this testimony to the jury.

21 So I don't know how much time you want in order to  
22 submit that additional information. I know everyone is very  
23 busy.

24 MS. LOZANO: Your Honor, we request until Monday to  
25 provide the Court with briefing on the additional testimony

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1 that would be provided outside of the record. And what we can  
2 learn about the technology that would be used understanding  
3 that part of that may depend on the information that we get  
4 from the Central Authority of Ireland and how quickly we're  
5 able to get that information but we will endeavor to update the  
6 Court on that on Monday as well.

7 THE COURT: OK.

8 Mr. Devlin-Brown, anything else?

9 MR. DEVLIN-BROWN: No. If we could just have two days  
10 to respond to theirs?

11 THE COURT: Absolutely.

12 So again and to put the parties on notice, it may well  
13 be that we start trial and I haven't decided this. And during  
14 the course of the trial you put on ten witnesses, ten different  
15 financial witnesses that say we came in and he told us "A" and  
16 "B" and he didn't tell us "C", there comes a point when it  
17 becomes cumulative and if it's going to be cumulative and rare  
18 in terms of the procedure, then it's not coming in. But there  
19 you have it.

20 OK. Unless there's anything else, we are adjourned.

21 Thank you, folks.

22 (Adjourned)